

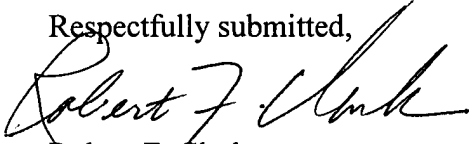
assert that this is incorrect. Yamada in Example 1 heats an aqueous mixture of CoOOH and $\text{LiOH}\cdot\text{H}_2\text{O}$ to dryness at 90°C and 100°C . Yamada does not form heterogenite by heating. Yamada heats heterogenite in combination with a lithium compound. The Examiner's chart only confirms the Applicants' data which shows that heating heterogenite above 150°C converts it to Co_3O_4 . (Specification, page 3). It does not disclose heating a cobalt hydroxide precipitate to form a high surface area heterogenite material. Since the prior art material is not produced in substantially the same manner as the Applicants' claimed material, the Applicants respectfully assert that the claimed invention is not anticipated or made obvious by Yamada.

The Applicants respectfully assert that the Examiner is similarly mistaken with respect to JP '970. That reference teaches forming a $\beta\text{-CoOOH}$ layer on the surface of a nickel hydroxide powder. The layer is made by mixing nickel hydroxide and metal cobalt powder, or a cobalt compound, in an aqueous alkali solution to form a cobalt hydroxide layer and then oxidizing the hydroxide layer with an oxidizing agent. JP '970 does not teach or suggest using heat to convert the cobalt hydroxide to $\beta\text{-CoOOH}$. (Paragraphs 0012-0015). Only after the $\beta\text{-CoOOH}$ is formed is the powder heated in aqueous sodium hydroxide to form a sodium-containing cobalt compound. The purpose of the heating is not to form heterogenite. (Paragraphs 0016-0018). Since the prior art material is not produced in substantially the same manner as the Applicants' claimed material, the Applicants respectfully assert that the claimed invention is not anticipated or made obvious by Yamada.

As a final matter, the Examiner has reasserted the Examiner's catch-all provision which the Applicants have objected to previously. The Applicants therefore reassert their prior objection here. The Applicants respectfully assert that general knowledge of the relationship between particle size, surface area, density and packing factors does not teach or suggest how to make a high-surface-area heterogenite powder as claimed by the Applicants. It is well established that common knowledge and common sense do not substitute for authority when the law requires authority. *In re Lee*, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). When an assertion of general knowledge is made to negate patentability, that knowledge must be articulated and placed of the record. *Id.* at 1435. The law requires more than just the Examiner's conclusory statements. The Applicants respectfully assert that the Examiner has not articulated how general knowledge of the above-mentioned relationships makes obvious the Applicants' claimed invention. Therefore, the Applicants respectfully assert that the Examiner's catch-all position does not anticipate or make obvious the Applicants' claimed invention..

In view of the foregoing response, it is believed that the Examiner's rejections have been overcome and that the application is in condition for allowance. Such action is earnestly solicited.

Respectfully submitted,



Robert F. Clark
Reg. No. 33,853

OSRAM SYLVANIA Inc.
100 Endicott St.
Danvers, MA 01923